

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

JUDITH TRACKWELL,

Case No. 2:15-CV-02168-SU

Plaintiff,

v.

**FINDINGS AND
RECOMMENDATION**

HOSTETTER LAW GROUP, LLP;
HOSTETTER KNAPP LLP; D. ZACHARY
HOSTETTER; D. RAHN HOSTETTER;
REBECCA KNAPP; AC3, INC.;
MARILYN PRESTON SUAREZ;
CHARLES WIKSTROM; and CHARLENE
WIKSTROM,

Defendants.

SULLIVAN, United States Magistrate Judge:

At the time plaintiff Judith Trackwell filed her complaint, Federal Rule of Civil Procedure 4(m) required that plaintiff serve defendants within 120 days. Rule 4(m) provided: “If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (2015). Since plaintiff filed her

complaint, an amended Rule 4(m) took effect, reducing the time limit from 120 to 90 days. Otherwise, Rule 4(m) remains unchanged.

Plaintiff filed her pro se complaint with this Court on November 19, 2015, but has not served defendants. On April 18, 2016, 150 days after plaintiff filed her complaint, the Court issued an Order to Show Cause, instructing plaintiff “to show cause in writing, no later than 10 days from the date of this order, why this action should not be dismissed for failure to effectuate service.” Order, at 1 (Doc. #5). Plaintiff responded, attributing her failure to serve defendants to confusion concerning a related appeal and a bankruptcy proceeding in Missouri. Resp., at 1 (Doc. #6). She requested that the Court either stay the case or allow her to complete service so she could then pursue a stay. Resp., at 1-2. On May 2, 2016, the Court ordered plaintiff to effectuate service and provide proof of service to the Court within 30 days. *See* Doc. #7. The Court also granted plaintiff 10 days after filing proof of service to file a motion to stay the case. *See* Doc. #7. More than 30 days have passed and plaintiff has failed to file any proof of service with the Court.

Plaintiff has had two warnings and more than 200 days to effectuate service on defendants. She has failed to do so. Accordingly, this case should be dismissed without prejudice

RECOMMENDATION

For the above reasons, this case should be DISMISSED without prejudice for failure to effectuate service.

SCHEDULING ORDER

The above Findings and Recommendations will be referred to a United States District Judge for review. Objections, if any, are due June 27, 2016. If objections are filed, a response to the objections is due fourteen days after the date the objections are filed and the review of the Findings

and Recommendations will go under advisement on that date.

IT IS SO ORDERED.

DATED this 9th day of June 2016.

/s/ Patricia Sullivan
Patricia Sullivan
United States Magistrate Judge